

Subject: Re: Lowe v. CSXT

Date: Friday, January 17, 2020 at 5:39:18 PM Eastern Standard Time

From: Edward Cook

To: Mary Taylor Gallagher

CC: lrodgers@cookpclaw.com, Bill Leverett (bleverett@cookpclaw.com), Chris Cardwell, Grayson Papa

Mary Taylor:

Please file/provide your discovery responses and or protective motion and we will file the appropriate motions on our end. Failure to respond to discovery (that is due today) will be subject to sanctions and/or any and all relief available. Failure to receive your responses immediately will require us to file motions with the Court.

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On Jan 17, 2020, at 5:32 PM, Edward Cook <ecook@cookpclaw.com> wrote:

Mary Taylor:

Please provide me the name and contact information of the NTSB Assistant General Counsel that you spoke with.

Also, please provide me with the name and contact information of the NTSB Investigator In Charge.

I disagree with your and CSXT's position.

CSXT has litigated numerous death cases and catastrophic injury cases involving the NTSB and FRA and I would request you send me any previous order that prohibited CSXT from complying with discovery until a " NTSB public release of information."

I also note, this effort in failure was made after you requested an extension to respond to discovery two weeks ago and is clearly CSXT's effort to avoid answering discovery.

I look forward to your response.

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On Jan 17, 2020, at 4:48 PM, Mary Taylor Gallagher <mtgallagher@gsrm.com> wrote:

Ed,

I need to alert you to an issue with discovery that we're going to need to bring to Judge Corker's attention. CSXT is a party to the NTSB's ongoing investigation of this accident as defined in 49 C.F.R. Section 831.11. Until I researched it this week, I did not realize that 49 C.F.R. Section 831.13 prohibits CSXT "from releasing information obtained during an investigation at any time prior to the NTSB's public release of information."

You may have dealt with this issue before, but I have not, and there are not many cases. I did find the attached case involving an FELA claim from the D.C. District Court dated 11/15/19, and another case, though not FELA, from the Northern District of Florida dated 10/5/18.

I contacted the NTSB Assistant General Counsel about Section 831.13 and learned the following during our call. Until the NTSB issues its final report, CSXT is prohibited from producing any investigation documents or any materials related to this accident. This prohibition includes event recorder downloads, LDVR videos, yard camera videos, radio communications, photographs, witness statements, documents evidencing inspection of involved equipment (including prior to the accident), etc. He said that we can send the discovery requests to the NTSB Investigator in Charge ("ICC") along with a list of the responsive items and/or information, and the ICC may decide let us produce some items now. He said it is typically 14-18 months after an accident before the ICC will allow any information to be produced in discovery, and at least that long before the NTSB will issue its final report and allow a party to produce everything.

Even if the ICC allows CSXT to produce limited materials before it issues its final

report, , this is still going to impact discovery deadlines and certainly expert disclosures. I will contact Judge Corker's clerk and get his availability for a conference call next week. I'm available anytime on my cell phone (615-500-5991) to talk through how we handle this and what we want to propose to Judge Corker.

Mary Taylor

Mary Taylor Gallagher

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